

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FREDRICK D. KILMER,  
Petitioner,

v.

MARION SPEARMAN, Acting Warden,  
Respondent.

Case No. [11-cv-05560-YGR](#) (PR)

**ORDER DENYING PETITIONER'S  
MOTION FOR ENTRY OF DEFAULT  
JUDGMENT; AND *SUA SPONTE*  
GRANTING HIM EXTENSION OF  
TIME TO FILE TRAVERSE**

Petitioner, a state prisoner, filed a *pro se* petition for a writ of habeas corpus.

In an Order dated March 31, 2015, the Court issued a briefing schedule and directed Respondent to file an answer within twenty-eight days of the issuance of that Order.

More than twenty-eight days passed, and Respondent did not file a timely answer or a request for an extension of time in which to do so. As a result, in a filing dated May 3, 2015, Petitioner filed a motion entitled, "Motion to Grant Petitioner[']s Amended Writ Per 28 U.S.C. [§] 2244 (d)(1)(D) Presumption of Innocence," which the Court construes as his motion for entry of default judgment in his favor. Dkt. 54.

On May 5, 2015, Respondent filed an answer as well as a motion for extension of time to file an answer. Respondent claimed that "due to an internal office oversight, [R]espondent's answer was not filed on February 28, the due date." Dkt. 51 at 1. Thereafter, the Court granted Respondent's motion for extension of time, stating that "[g]ood cause appearing, the time in which Respondent may file an answer will be extended *nunc pro tunc* to May 5, 2015, the date that the answer was filed." Dkt. 55 at 1. The Court directed Petitioner to file a traverse and serve it on Respondent's counsel no later than twenty-eight days from the date he received the answer. *Id.*

The Court finds that Respondent has complied with its Orders and litigated this action diligently for the past three years. Without some showing of an intentional refusal to comply with

1 the March 31, 2015 scheduling order—which Petitioner has not made—default will not be  
2 entered. Accordingly, the Court DENIES Petitioner’s motion for entry of default judgment in his  
3 favor. Dkt. 54.

4 In an abundance of caution, pursuant to a request from Clerk’s Office staff, Respondent  
5 has sent another copy of the answer to Petitioner. Dkt. 59.

6 To date, Petitioner has not filed a traverse, and the deadline for doing so has passed.  
7 However, the Court on its own motion GRANTS Petitioner an extension of time to file a traverse.  
8 Petitioner shall file a traverse within **twenty-eight (28) days** from the date of this Order.

9 This Order terminates Docket No. 54.

10 IT IS SO ORDERED.

11 Dated: July 20, 2015

  
YVONNE GONZALEZ ROGERS  
United States District Court Judge

United States District Court  
Northern District of California